No. 2.

Judge FENTON to the Hon. D. McLEAN.

SIR,— Wellington, 28th August, 1871.

Having observed, amongst the papers placed before Parliament this session, a paper of Sir W. Martin, enclosing a memorandum by Dr. Shortland, on the subject of the Native Lands Act, I have the honor to request your perusal of letters written to me by the Judges of the Court, in reply to one addressed to them requesting them to favour me with their observations on the past working of these Acts, and suggestions of amendments which it would be advisable to introduce into a Consolidating Act, which I understood it was the intention of Government to bring forward this session. I have not a copy of my letter here, but the replies to it sufficiently indicate the nature of my inquiries. Mr. Smith did not reply, having been prevented, as he has informed me, by illness. I should not have deemed it necessary to trouble you with these papers, which I obtained simply for my own information and assistance, did I not think that the singular theories of Dr. Shortland, amounting, as they do, to a re-establishment of the Native Protectorate in an aggravated form, might tend to influence the minds of men who have little practical acquaintance with the subject, and who might regard silence on my part as an acquiescence in the views propounded, or at least as an acknowledgment of the truth of the facts referred to as mischiefs to be remedied. On this latter and most important part of the question I can say but little, for these facts are very barely stated and the evils are described in a very meagre manner; but as far as I can gather from the memorandum of Dr. Shortland, which seems to have had a certain influence on the mind of Sir W. Martin, the mischiefs on which he enlarges are confined to the Province of Hawke's Bay, in which the area of land yet to be dealt with is inconsiderable, and his scheme would, in my judgment, as little avail to cure them in the past as it would to prevent them for the future.

As early as 1866 I stated my views, that where counter-claimants, claimants, and proposed lessees had all a direct pecuniary interest in preventing the minute subdivision of lands, it would be impossible for any Court to discover the ownership of these lands beyond such a point as would suffice to terminate all contest amongst the claimants themselves. I therefore never expected that the Act of 1866 or 1867 would stop the mischiefs to which they were directed, as they threw upon the Court a duty which it was quite incapable of performing; and so it has proved. Having once decided the class of claimants to which an estate belonged, the Court became powerless to discover more than these recognized claimants chose to disclose, as all opposition ceased. Sir W. Martin proposes to remedy this evil by carrying still further the plan which has already failed. He would reduce the Court to the position of a diplomatic negotiator first, and, having thus destroyed its standing as a judicial body, would place it on the Bench to act with authority,—an idea which entirely ignores the principles of human nature. The true remedy, in my mind, was the presence of some of the local officers of the Government to watch the Courts, and bring forward such matters as were, from immediate and very apparent pecuniary interests, concealed from the Court by parties.

Having failed to achieve this object by other means, when I had the honor of a seat in the Legislative Council I lost no time in introducing a Bill for the purpose. This Bill, as you know, passed the Council, but was lost in the House of Representatives, although taken up by the Government.

The Frauds Prevention Act of last session has done much, but I respectfully submit that it does not begin at a sufficiently early stage of the proceedings in the conversion of Native titles to land. Prevention is always easier than cure, and proper provisions made in grants would absolutely prevent the possibility of transactions which the officer appointed under that Act can only frustrate after money has been spent, and, possibly, something like equities have been created.

The objections to the present system which are urged by such men as Wi Tako, constitute, in my judgment, its greatest commendation. Shrewd men like him have not failed to observe that in the destruction of the communal system of holding land is involved the downfall of communal principles of the tribe, and the power of combination for objects of war or depredation. When a man is comfortably settled on his own farm, he is not ready to follow his chief in an agitation which promises nothing beyond a little excitement, and jeopardizes all he has got; and the feeling represented by Tako will doubtless spread as the power to give it any injurious operation will diminish. But for this very reason I think it just and politic that the Government should be furnished with authority to see that the old chiefs, whilst gradually losing one dignity, are invested with another. They should have sufficient land secured to them to render certain their status as gentlemen, though I should be sorry to see this principle extended to the whole race, as I understand Sir W. Martin desires shall be done. A very large number of the Maoris are, according to their customs, slaves, or entitled to no territorial rights, unless a permission to occupy is called such, and I cannot see any reason why they should be excepted from the general necessity of getting their living by labour; but, on the other hand, I see the strongest motives of policy, justice, and gratitude, why such men as Te Hapuku should be carefully provided for and their position secured. Whether Parliament will see fit to rescue men from the effects of their own improvidence it is not for me to say. I cannot avoid thinking that it would be a dangerous precedent to allow any man or class of men to gain the belief that, if their imprudence is only of sufficient magnitude, Parliament will come to his or their assistance. In the case of the Hawke's Bay Natives, I believe a great number of the transactions now complained of were perfectly fair and honorable on the part of the European purchasers, and I am not aware whether it has been found that the Supreme Court has been applied to to interfere in such cases as are of a contrary character. But I am inclined to approve of that part of Sir W. Martin's scheme which would confine the interpretation of deeds to official agents of the Court, though that gentleman does not seem at all aware how greatly this plan would increase the expense attending the execution of any conveyance.

I am not certain that when Parliament, in 1865, passed Mr. FitzGerald's Native Rights Bill, it was not premature in its action. I think the intelligence and caution of the Maori was estimated more highly than it ought to have been, for the action of the Supreme Court is rigorous, and documents, when taken there, are construed according to their expressed meaning, or their meaning implied by law,